such a case the same rule applies as in the case of a special power. He supports his rule by the decision, *In re Powell's Trusts,* 39 L. J. (Ch.) 188, and says that this is the weight of authority. GRAY, PERPETUITIES (2 ed.) § 526b. This rule seems to have been followed in this country wherever the question has been raised, and this seems to have been done mainly because of the powerful influence which Mr. GRAY'S views have had. *Genet* v. *Hunt,* 113 N. Y. 158; *Thompson* v. *Livingston,* 6 N. Y. Super. Ct. 539; *Lawrence's Estate,* 136 Pa. St. 354, also the principal case, of which the facts are given above. In a recent note in 26 HARV. L. REV. 64, this rule as laid down by GRAY is very much questioned both upon principle and authority, and it is true that the case of *In re Powell's Trusts,* upon which the decisions of the American courts are, at least indirectly, based, has been entirely overruled in England. *Rous* v. *Jackson,* 29 Ch. D. 521; *In re Flower,* 55 L. J. Ch. 200; *Stuart* v. *Babington,* 27 L. R. Ir. 551.

PHYSICIANS AND SURGEONS—LIABILITY FOR UNAUTHORIZED OPERATION.—An infant aged eleven was operated upon for adenoids by defendant at the instance and request of an adult sister, but without parental sanction. The child never recovered consciousness after the administration of the anæsthetic, and died during the operation. The parents knew nothing of the operation until after the death of the child. *Held,* the surgeon was liable for the death in an action brought by the parents. *Rishworth* v. *Moss* (Tex. 1913) 159 S. W. 122.

That consent to a surgical operation is necessary except in cases of emergency, is uniformly the holding of the courts. Such consent must be given by the person himself if capable, or by some one with authority to consent for him if the person is incapable. Consent may be implied from the circumstances of the case. *Mohr* v. *Williams,* 95 Minn. 261; *Pratt* v. *Davis,* 224 Ill. 300; *State, use of Janney* v. *Housekeeper,* 70 Md. 162. Whether consent may be implied is ordinarily a question for the jury. So far as the writer has been able to ascertain, the question of a surgeon's liability for an unauthorized operation upon an infant has been before the courts in but one other case. In *Bakker* v. *Welsh,* 144 Mich. 632, an infant aged seventeen was operated upon without parental consent and died. He was accompanied to the offices of the surgeon by an adult sister. The court in its opinion held that it would be too harsh an application of the rule to hold the surgeon liable. The principal case says of the reasoning in *Bakker* v. *Welsh,* supra, "The decision of the court is entirely unsatisfactory and without valid reason for its rendition," and of the two cases logic would seem to be with the Texas Court. See, however, comment on *Bakker* v. *Welsh,* in 5 MICH. L. REV. 40. The question was attempted to be raised in *Luka* v. *Lowrie,* 171 Mich. 122, and in *Wood* v. *Wyeth,* 106 App. Div. 21, but these cases were decided on other grounds.

PLEADING—COMPLETE DEFENSE PLEADED AS A PARTIAL DEFENSE.—The complaint demanded the possession of, or the value of, certain fire apparatus installed by the plaintiff in the defendant's building. In his answer the defendant pleaded facts which, if true, would have been a complete defense,

but he pleaded them "as a partial defense." The plaintiff demurred. From an order sustaining the demurrer the defendant appealed. *Held,* that facts constituting a complete defense are not bad on demurrer because pleaded "as a partial defense." *H. G. Vogel Co.* v. *Wolff,* 141 N. Y. Supp. 756.

It is the general rule that a plea or answer purporting to be a defense to the whole cause of action, but which answers only a part, is bad on demurrer. *State Treasurer* v. *Holmes,* 4 Vt. 110; *Webb* v. *Nickerson,* 4 Pac. 1126; *Loder* v. *Phelps,* 13 Wend. 46; *Shortle* v. *Terre Haute & I. R. Co.,* 131 Ind. 338; *Illinois Central R. Co.* v. *Ludig,* 64 Ill. 151. Whether the converse of the above general rule is true is a disputed question, and one on which very few cases have been decided. Indiana and Maryland have held that a plea entitled "as a partial defense," though in itself a complete defense to the cause of action alleged, is bad on general demurrer. *Davis* v. *Bush,* 4 Blackf. (Ind.) 330; *Cram* v. *Yates,* 2 Har. & G. 332. On principle the case is properly decided. For if facts alleged are sufficient to constitute a complete defense, they must necessarily constitute a partial defense. The whole is greater than any of its parts. A liberal construction of pleadings demands that substance should not be sacrificed to form.

PLEADING—DEMURRER.—Plaintiff and defendant entered into a contract in regard to the purchase of tax-titles to certain property of a corporation in which the plaintiff was a stockholder. In his complaint, the plaintiff alleged the performance of all agreements on his part to be performed, and asked specific performance on the part of the defendant. The defendant demurred on the ground that the contract pleaded in the complaint was illegal and void, contrary to public policy and good morals, and could not be enforced. *Held,* that the demurrer was properly overruled, for the reason that it was unauthorized by any of the grounds of demurrer prescribed by the code. *Meyer* v. *Wright,* (Colo. App. 1913) 131 Pac. 787.

One of the grounds of demurrer specified in the code is, "that the complaint does not state facts sufficient to constitute a cause of action." Without using the exact language of the code, the demurrer pointed out specifically wherein the complaint was insufficient. Many courts hold with the above decision that the demurrer must be taken in the exact language of the statute, and that a substantial compliance therewith is not sufficient. *Mayberry* v. *Kelly,* 1 Kan. 116; *Harper* v. *Chamberlain,* 11 Abb. Prac. 234. To use the language of *Hanson* v. *Neal,* 215 Mo. 256: "In technical pleading technicalities count. It is well to keep within the statutory way as a beaten path." Other courts hold that a demurrer, though not in the precise language of the statute, is sufficient if it sets out substantially one of the statutory causes for demurrer. *Busher* v. *Knapp, Adm'r.,* 107 Ind. 340; *Lagow et al.* v. *Neilson,* 10 Ind. 183; *Hanna* v. *Hawes,* 45 Iowa 437. But even in the latter courts, if facts are not stated in the demurrer, it must conform to the provisions of the statute in terms. *Lane* v. *State,* 7 Ind. 426. In those cases where facts set up in the demurrer in disregard of the statutory form have been allowed, the demurrer has been held to be more specific, and "would not cover any objection other than that specifically pointed out, although